UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 2 3 2016

REPLY TO THE ATTENTION OF:
WW-16J

CERTIFIED MAIL 7014 2870 0001 9579 5566
RETURN RECEIPT REQUESTED

Dillenberger Farms Inc.
6664 A. Road
Valmeyer, IL 62295

Re: Unauthorized discharge of fill material into Moredock Lake

Dear Sir or Madam:

This is a follow-up to the request for information EPA sent to James Dillenberger on April 21, 2014, regarding the clearing of forested wetlands and the placement of fill material into Moredock Lake near the property you operate and which is located in Section 27, Township 2 South, Range 11 West, Monroe County, Illinois.

After reviewing the response to that request for information and after several discussions with the late James Dillenberger in 2014, EPA has determined that a violation of Section 301 of the Clean Water Act (CWA) may have occurred. The violation includes the mechanized land clearing of approximately 2 acres of forested wetland and deposit of fill material into the lakebed of Moredock Lake. Therefore, EPA is requesting that Dillenberger Farms Inc. conduct restoration activities to remedy the environmental harm caused by those activities. Specifically, the removal of existing brush piles and tree debris that has been deposited in Moredock Lake will be required, as well as revegetation of the cleared forested wetlands. This letter requests your cooperation in developing a restoration and removal plan that will be memorialized in an agreement between you and EPA under Section 309 of the Clean Water Act. General guidelines for removal and restoration plans are included as an attachment to this letter. A response to this request should be sent within 20 days of receipt of this letter.

Please be advised that EPA is authorized to initiate a variety of enforcement actions to correct this violation, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. EPA may issue administrative orders under Section 309(a) requiring correction of the violation and administrative complaints under Section 309(g) assessing administrative penalties up to $187,500. EPA may also request the U.S. Department of Justice to file a civil suit in Federal District Court for injunctive relief and civil penalties of up to $32,500 per day of violation. Finally, EPA may also seek criminal prosecution entailing imprisonment and fines of up to $50,000 per day of violation.

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Please contact Mr. Yone Yu at (312) 886-2260, to arrange for a discussion on next steps to resolve this violation.

Sincerely,

Peter Swenson, Chief
Watersheds and Wetlands Branch

Enclosure

EPA Region 5 – General Guidelines for Removal and Restoration Plans

These guidelines provide general specifications for preparing removal and/or restoration plans to remediate the unauthorized filling of waters of the United States, including wetlands. As environmental conditions vary at every site, precise specifications will depend upon conditions pertaining to the site in question. The size of the area to be restored, its biological and physical characteristics, and the level of disturbance the site has experienced will define the scope and complexity of the restoration plan. For most cases, the following instructions represent the minimum requirements to prepare an acceptable removal and/or restoration plan.

I. Existing Physical Conditions

A. Provide a surveyed site plan showing property boundaries, streets, buildings, waterbodies (show ordinary high water mark), wetlands, Federal Emergency Management Agency 100-year floodplain (if applicable), areas of unauthorized fill, elevation contours, and other ground surface features at a scale no less than 1 inch = 40 feet. The plan must include a cross-section view of the site that shows soil depths, fill depths, and the average depth to groundwater across the site.

B. Describe the physical conditions of the site, including its size; the size and type of the unauthorized fill; existing aquatic resources (e.g. streams, lakes, wetlands - including the types of vegetation); the soil types present; the hydrologic regime of the site; and other relevant information such as presence of threatened and endangered species (and their designated critical habitat), surrounding land use, and any proposed alterations to aquatic resources to accommodate for these ongoing activities (irrigation practices, ditching, maintenance of drainageways, etc.) within or near the restoration site.

II. Proposed Physical Conditions

A. Using the site plan described in I.A. as a base, show the areas where you will do the removal and restoration work. Show proposed finished grades, expected ordinary high water mark elevations, the location of proposed planting or seeding, and the location of all sediment and erosion control structures such as hay bales or silt screens. The plan must include a cross-section view of the site that shows proposed soil depths, and average depth to groundwater across the site.

B. Describe the removal and restoration work, including the methods and equipment you will use; how the equipment will gain access to the site; where you will dispose of any removed material; a schedule of how the work will progress across the site; how the soil will be prepared for planting; a list of herbaceous and woody species you will seed or plant; the sources of the plant material (note: as a rule, EPA will not permit transplanting of plant stock); the planting methods; physical layout of where and how plant material will be installed and at what densities; how you will minimize adverse impacts to aquatic resources while work is underway; and, the expected hydrologic regime of the site when restored.

C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate methods; this delineation shall

represent the limit of construction activities such that no work shall occur beyond these boundaries unless authorized by EPA.

III. Actual Restored Physical Conditions

A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site when you have completed grading activities (i.e., an "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan must include a cross-section view of the site that shows actual soil depths and average depth to groundwater across the site.

IV. Tree Planting Plan

A. If tree planting is required, replanting of tree stock will require the use of bare root or Root Production Method (RPM) trees across all restoration sites. Initial planting densities will vary based on the size of trees planted and site-specific conditions, but as a general guideline plant at least 436 bare-root trees/acre or 109 RPM trees/acre.
B. Select tree species that are native to the area, suitable for site conditions, and with diversity across several species. All planted trees must be clearly marked or labeled such that they can be identified in the field and differentiated from volunteer species.
C. Implement appropriate predation deterrents to protect the tree plantings. These may include, but are not limited to, fences, tree shelters, tree tubes, bud caps, and spray repellants.

V. Performance Standards

A. Restored sites must meet wetland criteria (soils, hydrology, and vegetation) as established in the 1987 Corps of Engineers Wetland Delineation Manual and the applicable Regional Supplement:
    a. Predominance of hydrophytic vegetation.
    b. Presence of hydric soils.
    c. Presence of wetland hydrology.
B. Vegetation Standards
    a. More than 50% of plant species are facultative (FAC) or wetter (FACW or OBL).
    a. Less than 20% cumulative areal cover of invasive and/or non-native species including, but not limited to, reed canary grass, cattails, Canada thistle, bull thistle, smooth brome grass, giant ragweed, giant foxtail, common ragweed, quack grass, black locust, *Phragmites,* sweet clovers, and non-native honeysuckles and buckthorns. Control of invasive and/or non-native plant species will occur for at least 3 full growing seasons, and include mowing, burning, disking, mulching, biocontrol and/or herbicide treatments as necessary.

C. Tree plantings will be required to meet or exceed these yearly performance standards:

Year	Survival of RPM trees	Survival of bare-root trees
1	98 trees/acre	370 trees/acre
2	98 trees/acre	370 trees/acre
3	87 trees/acre	305 trees/acre
4	87 trees/acre	305 trees/acre
5	76 trees/acre	240 trees/acre
6-10	76 trees/acre	240 trees/acre

The final performance standard is reflected in the years 5-10.

VI. Monitoring

A. Provide a monitoring plan that proposes a simple statistical method to assess the success or failure of restoration. For example, you could use transects with sampling stations for measuring the percent cover in each vegetative stratum. Your plan must include a general provision to take corrective action, at the direction of EPA, should monitoring show that you are not meeting the performance standards.

B. You must monitor midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the rest of the monitoring period. You must monitor for three to five years, depending on the scope and complexity of the restoration. Tree planting may require monitoring for up to 10 years.

C. After each monitoring event, submit a report describing the environmental conditions at the site and assessing the success or failure of restoration. The report must include photographs, identify any problems discovered, and recommend corrective actions.

D. If performance standards are not met after the end of the monitoring period, then you must take corrective action to achieve these performance standards and continue monitoring to track performance annually until the performance standards are met.

VII. Inspections

The plan must allow EPA or their designated agent to inspect the site after you have installed sedimentation and erosion control structures; completed grading activities; completed initial planting or seeding; and after monitoring indicated that you have met the performance standards.

VIII. Schedule

The plan must include a comprehensive schedule for all removal, restoration, inspection, monitoring, and reporting activities.